

# Exhibit 6

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 PRESTON JONES and SHIRIN )  
4 DELALAT, on behalf of )  
5 themselves, all others )  
6 similarly situated, and the )  
7 general public, )

8 Plaintiffs, )

9 vs. ) Case No. 3:16-cv-00711  
10 HSG

11 NUTIVA, INC., )

12 Defendant. )

13 -----)

14 VIDEO DEPOSITION OF NUTIVA, INC. 30(b)(6)

15 CORPORATE REPRESENTATIVE - JOHN ROULAC

16 San Francisco, California

17 Monday, March 20, 2017

18  
19 \*CONFIDENTIAL\*

20  
21  
22  
23  
24 Reported by: REBECCA L. ROMANO, RPR, CSR NO. 12546

25 JOB NO: 120853

<p style="text-align: right;">Page 2</p> <p>1 2 3 4 March 20, 2017 5 9:29 a.m. 6 7 8 Deposition of John Roulac, held at 9 the offices of Hanson Bridgett, 10 425 Market Street, 26th Floor, 11 San Francisco, California, 12 before Rebecca L. Romano, a 13 Registered Professional Reporter, a 14 Certified Shorthand Reporter of the 15 State of California. 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S: 2 3 THE LAW OFFICE OF JACK FITZGERALD 4 Attorneys for Plaintiffs 5 Hillcrest Professional Building 6 3636 Fourth Avenue 7 San Diego, CA 92103 8 BY: JACK FITZGERALD, ESQ. 9 10 and 11 12 LAW OFFICE OF PAUL K. JOSEPH 13 4125 West Point Loma Boulevard 14 San Diego, CA 92110 15 BY: PAUL JOSEPH, ESQ. 16 17 AMIN TALATI &amp; UPADHYE 18 Attorneys for Defendant 19 100 South Wacker Drive 20 Chicago, IL 60606 21 BY: SANJAY KARNIK, ESQ. 22 23 24 ALSO PRESENT: 25 Sean McGraft, Videographer</p>
<p style="text-align: right;">Page 4</p> <p>1 THE VIDEOGRAPHER: Good morning. 2 This is the beginning of Disc No. 1 of 3 the videotaped deposition of John Roulac in the 4 matter Preston Jones, et al., versus 5 Nutiva, Incorporated, in the 6 United States District Court of 7 Northern District of California, 8 No. 3:16-cv-00711 HSG. 9 This deposition is being held at 10 425 Market Street, San Francisco, California on 11 March 20th, 2017, at approximately 9:29 a.m. 12 My name is Sean McGraft from 13 TSG Reporting, Incorporated, and I'm the legal 14 video specialist. The court reporter is 15 Rebecca Romano in association with TSG Reporting. 16 Will counsel please introduce yourselves, 17 starting with the questioning attorney. 18 MR. FITZGERALD: Jack Fitzgerald for 19 Plaintiffs. 20 MR. JOSEPH: Paul Joseph for Plaintiffs. 21 MR. KARNIK: Sanjay Karnick for 22 Defendant. 23 THE VIDEOGRAPHER: Will the 24 court reporter please swear in the witness and we 25 can proceed.</p>	<p style="text-align: right;">Page 5</p> <p>1 THE REPORTER: If you could raise your right 2 hand for me, please. 3 THE DEPONENT: (Complies.) 4 THE REPORTER: You do solemnly state, 5 under penalty of perjury, that the testimony you 6 are about to give in this deposition, shall be the 7 truth, the whole truth and nothing but the truth? 8 THE DEPONENT: I do. 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 ////</p>

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1 better for -- coconut oil is better for you because  
2 we don't spray pesticides, herbicides.

3 If you -- if you choose to be a  
4 vegetarian and not consume animal products, then  
5 coconut oil would be better for you.

6 Q. Okay.

7 A. That's -- that's a person's personal  
8 choice.

9 Q. Okay. Is anything on the label of the  
10 Nutiva coconut oil intended to convey the message  
11 to consumers that the product is healthier than  
12 better to consume; for example, healthier in terms  
13 of heart health?

14 MR. KARNIK: Objection. Calls for a  
15 legal conclusion.

16 THE DEPONENT: Yeah. Yeah. We are not  
17 making medical claims.

18 Q. (By Mr. Fitzgerald) Okay. And if the label,  
19 in fact, made that suggestion to consumers,  
20 notwithstanding that that's not Nutiva's business to do  
21 that, would that be inappropriate, in your mind?

22 A. I would state, again, that we are not --  
23 the company does not make medical claims.

24 Q. And why is that?

25 A. We are a food manufacturer.

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1 Q. Other than scientific and anecdotal --  
2 anecdotal evidence, is Nutiva otherwise aware that  
3 coconut oil has -- coconut oil consumption has  
4 negative health effects?

5 A. Can -- I'm sorry. Can you repeat the  
6 question one more time?

7 Q. Yeah.

8 So we talked about potentially scientific  
9 evidence, as might be reported in peer-reviewed  
10 journals. We talked about anecdotal evidence; some  
11 of the emails we saw.

12 Other than scientific and anecdotal  
13 evidence, is Nutiva aware of any other evidence  
14 that coconut oil consumption has negative health  
15 effects, or is it otherwise aware that --

16 A. Not that I recall.

17 Q. Okay. Can you turn to tab 6, please.  
18 This should be a document that has Production  
19 No. NUT575 in the bottom right-hand corner; is that  
20 right?

21 A. 575? Okay.

22 Q. All right. Take a moment to look at  
23 that, please.

24 (Exhibit 5 was marked for identification by  
25 the court reporter and is attached hereto.)

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1 Q. (By Mr. Fitzgerald) Okay. This has been  
2 marked as Exhibit 5.

3 Have you had a chance to look at it  
4 briefly?

5 A. I see the first page, yes.

6 Q. Okay. It looks like this is a email  
7 dated February 26th, 2014, from a consumer to the  
8 Nutiva help desk, and she says, "I just bought some  
9 Nutiva Coconut Oil and am interested in knowing  
10 whether it is highly inflammatory, as indicated on  
11 this website," and then she provides a link to a  
12 Website, nutritionaldata.self.com, with an  
13 extension, and it looks like she pasted it, and if  
14 you turn on to the second page, it looks like the  
15 Website rated coconut oil as "strongly  
16 inflammatory."

17 Have you ever seen this document before?

18 A. No, I have not.

19 Q. Have you ever seen any indication from  
20 any -- any person, whether on this Website or else  
21 otherwise, that coconut oil is strongly  
22 inflammatory?

23 MR. KARNIK: I will object to form. I  
24 don't think any reader can tell what the -- the  
25 writer of the email means by "inflammatory."

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1 But you can answer.

2 THE DEPONENT: Not -- not that I -- not  
3 that I recall.

4 Q. (By Mr. Fitzgerald) Do you know if anybody  
5 at Nutiva, after receiving this, investigated whether  
6 coconut oil might be strongly inflammatory?

7 A. Not -- not -- not that I -- not that --  
8 not that I can remember.

9 Q. Okay. Okay. Is the label of the Nutiva  
10 coconut oil -- the -- the Virgin Coconut Oil,  
11 today, in compliance with all FDA regulations?

12 MR. KARNIK: I will object in that it  
13 calls for a legal conclusion.

14 THE DEPONENT: We've made, you know,  
15 changes to the -- made some changes recently to the  
16 labels, and -- and those are now flowing out to  
17 the -- to the market. Not -- maybe not every SKU  
18 has hit the market, but -- but anytime we are  
19 printing new labels, has a -- has revised labels  
20 for the coconut oil.

21 Q. (By Mr. Fitzgerald) Okay. And how recently  
22 did you revise those labels?

23 A. Earlier this year.

24 Q. What were the revisions?

25 A. We just took off -- I don't have the

13 (Pages 46 to 49)

1 exact, but some of them would be -- I think we took  
2 off the -- mentioning the percentage of -- of MCTs,  
3 the "62% MCTs," and the "100% Less Cholesterol Than  
4 Butter."

5 Q. You removed that?

6 A. Yes.

7 Q. Any other changes?

8 A. There might have been, but I -- but I  
9 don't recall them exactly.

10 Q. Did you make those changes in order to  
11 comply with the regulations?

12 MR. KARNIK: I will object in that it  
13 calls for a legal conclusion. Let me also object  
14 in that it elicits information that is  
15 attorney-client privilege and so cannot have him  
16 answer that question.

17 MR. FITZGERALD: You are instructing the  
18 witness not to answer whether the -- the company  
19 removed the -- the label to comply with the  
20 regulations?

21 MR. KARNIK: Yeah, to be -- just to be  
22 sure, I would like the question to be read back. I  
23 don't want to --

24 MR. FITZGERALD: Okay.

25 MR. KARNIK: -- make that instruction

1 flippantly, so I want to be sure.

2 MR. FITZGERALD: Please.

3 (Record read as follows:

4 "QUESTION: Did you make those  
5 changes in order to comply with the  
6 regulations?")

7 MR. KARNIK: Let me with- -- let me  
8 withdraw the instruction not to answer, but I am  
9 going to maintain the objection that the question  
10 calls for a legal conclusion.

11 MR. FITZGERALD: Okay.

12 Q. (By Mr. Fitzgerald) All right. You can  
13 answer.

14 A. You know, we -- we were advised by -- by  
15 counsel, given that -- that we should, you know,  
16 make -- make a few of these changes, and so we did.

17 Q. And is it correct that you made the  
18 changes specifically in order to comply with the  
19 FDA regulations governing those statements?

20 MR. KARNIK: Let me -- let me -- let me  
21 object and say that calls for a legal conclusion  
22 and, that, I think, any further elaboration beyond  
23 his prior answer would -- would elicit  
24 attorney-client communications, so I can't instruct  
25 him -- I have to instruct him to not answer.

1 MR. FITZGERALD: Okay.

2 Q. (By Mr. Fitzgerald) Did you make the changes  
3 as a result of this lawsuit?

4 A. We made the -- as I stated, we made the  
5 change -- or our -- our counsel advised us to make  
6 some changes to the -- to the label, and I  
7 mentioned several of those changes, and that's the  
8 reason -- that's the reason why we did that.

9 Q. Okay. And -- and what counsel are you  
10 referring to?

11 A. Rakesh Amin's -- Amin Talati's law firm.

12 Q. Okay. And has Amin Talati given you  
13 regulatory advice in the past? Like, given you  
14 advice about your labels in the past?

15 MR. KARNIK: Let me object and -- and --  
16 and say that, even providing an answer to that --  
17 actually, let me -- let me withdraw that.

18 Can you read -- can you read the question  
19 again.

20 (Record read as follows:

21 "QUESTION: Has Amin Talati given you  
22 regulatory advice in the past? Like,  
23 given you advice about your labels in  
24 the past?")

25 MR. KARNIK: I'll allow -- I'll allow an

1 answer to that.

2 THE DEPONENT: Yes, they have.

3 Q. (By Mr. Fitzgerald) Okay. When -- when did  
4 you -- the relationship between Nutiva and Amin Talati  
5 begin?

6 A. Somewhere in the last, you know, five,  
7 six, seven years.

8 Q. Is it correct that -- that you had a  
9 personal relationship with Rakesh Amin before --  
10 and that's what led to -- to you hiring that firm?

11 A. I had met -- met Rakesh, you know, at  
12 industry events, and he has been -- was highly  
13 recommended, and that's why we hired his law firm.

14 Q. Okay. Before changing the labels --  
15 and -- and, by the way, we'd call for a -- an  
16 exemplar of the new label, if you have it.

17 Before changing the labels earlier this  
18 year, did the old label comply with all FDA  
19 regulations?

20 MR. KARNIK: I will object in that the  
21 question calls for a legal conclusion.

22 THE DEPONENT: We relied on -- so state  
23 the question one more time.

24 Can you repeat the question?

25 MR. FITZGERALD: I'll have her read it

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1 back.

2 (Record read as follows:

3 "QUESTION: Before changing the  
4 labels earlier this year, did the old  
5 label comply with all FDA  
6 regulations?")

7 THE DEPONENT: The FDA regulations are  
8 very -- they are very intricate, and, you know, I'm  
9 not an expert on at all of those. We followed to  
10 the best that we could, and then we chose,  
11 recently, to -- to make some slight adjustments.

12 Q. (By Mr. Fitzgerald) Okay. Is it important  
13 to Nutiva's business that its regu- -- that its labels  
14 comply with applicable regulations?

15 A. It is.

16 Q. And what -- what does Nutiva do to try to  
17 make sure that its labels comply with regulations?

18 A. We try to -- we -- we do the best that --  
19 that we can to, you know, interpret it and -- and  
20 follow it.

21 Q. Have you reviewed Plaintiffs' summary  
22 judgment motion in this case? Filed briefly and  
23 then withdrew regarding the -- you know, the  
24 compliance of the labels with the regulations?

25 A. If you want to show me the document, I

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1 can review it.

2 Q. I don't have that one with me.

3 Do -- do you remember ever having  
4 reviewed it, just generally?

5 A. I can't recall all the details with it,  
6 so...

7 Q. Okay. I take it you are aware that my  
8 co-counsel and I have filed lawsuits against not  
9 just Nutiva but several coconut oil manufacturers?

10 A. I understand that.

11 Q. Okay. Are you aware that virtually every  
12 coconut oil manufacturer we've either filed a  
13 lawsuit against or sent a demand letter to changed  
14 the label very shortly after we contacted them?

15 MR. KARNIK: I will object in that it  
16 assumes something not established in this case.

17 But you can answer.

18 THE DEPONENT: Not aware of that.

19 Q. (By Mr. Fitzgerald) Okay. Are you aware of  
20 any other coconut oil manufacturers changing their  
21 labels to get rid of the types of health and wellness  
22 claims that we challenge in this and other lawsuits?

23 A. I -- I -- I know that there are other  
24 companies that -- that -- that have changed their  
25 labels in the past.

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1 Q. What -- what companies are you aware of  
2 specifically that have changed their labels?

3 MR. KARNIK: Okay. Go ahead.

4 THE DEPONENT: I think Dr. Bronner's did  
5 it, you know, five or six years ago.

6 Q. (By Mr. Fitzgerald) Anybody else?

7 A. Not -- not that I'm -- that I can recall  
8 specifically.

9 Q. Okay. Has Nature's Way changed its  
10 coconut oil label in the last couple of years?

11 A. I think all companies change their labels  
12 on a -- on a regular basis, so I -- I haven't  
13 specifically examined their -- their -- their  
14 labels.

15 Q. Are you aware of a coconut manufacturer  
16 called BetterBody?

17 A. I -- I am.

18 Q. Are you aware that they agreed to remove  
19 a number of statements challenged in the lawsuit  
20 as -- in settling that lawsuit?

21 A. I understand that there was a -- a  
22 settlement recently. I didn't -- I don't know the  
23 specifics of the settlement.

24 Q. Okay. We brought this lawsuit against  
25 Nutiva in January 2016.

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1 Why did it take a year for Nutiva to  
2 change the label?

3 MR. KARNIK: Let me object in that it  
4 calls for -- it's -- it will ask for information  
5 that's attorney-client privilege, and I can't have  
6 him answer that.

7 Q. (By Mr. Fitzgerald) All right. Let me  
8 rephrase the question.

9 Other than if it would require you to  
10 reveal attorney-client communications, why did  
11 Nutiva change the -- wait, basically, a year af- --  
12 till after the lawsuit was filed to change the  
13 label?

14 A. We just -- we just -- you know, it took a  
15 while to -- to review the label and -- and make  
16 some of the -- make the -- the changes that we did.

17 Q. Okay. But the -- the changes that you --  
18 you made recently basically result from the lawsuit  
19 and the issues we have raised in the lawsuit,  
20 including the compliance with the regulations.

21 Is that fair to say?

22 A. As stated, our counsel recommended that  
23 we -- we make some changes to the -- to the labels,  
24 which we've -- which we've done.

25 Q. Is it Nutiva's position that -- well, let

15 (Pages 54 to 57)

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me ask you this: Was it the lawsuit that led your counsel to advise you to change the label?

MR. KARNIK: I'll object in that it's seeking attorney-client privilege and attorney-work-product information, and I will instruct the witness to not answer.

MR. FITZGERALD: Okay. I have to say, at this point, I think it's possible that the privilege has been waived. I won't proceed, but -- now, but, you know, I think it's something we -- we may need to revisit, and maybe on a break we can -- we can discuss, but let me move on for now.

Q. (By Mr. Fitzgerald) Is it correct that, in January 2012, Nutiva sold only one coconut oil product, which was the Organic Extra Virgin Coconut Oil?

A. Can you -- can you define what you -- you mean by that? We sell lots of different coconut oil products.

Q. Sure. Let me drill down a little bit.

So I want to focus just on January 2012 -- okay? -- which is the first month of our class period.

As of that date, we know that there was a product called Organic Extra Virgin Coconut Oil, the semisolid product that was sold in a yellow

label.

You are familiar with that product?

A. Yes.

Q. Okay. Was there any other coconut oil product, just pure coconut oil, that Nutiva was selling in January 2012?

A. Nutiva sells products all over the world and sometimes -- you know, in different packages and -- and different -- different label configurations, so --

Q. Okay.

A. -- so we may have -- we have multiple products, you know, selling around the world.

Q. Okay. Fair enough.

Under Nutiva's own brand --

A. Under the Nutiva brand, that's what I'm stating.

Q. Yes. Okay.

Under Nutiva's own brand in the United States as of January 2012, is it correct that the Organic Extra Virgin Coconut Oil in the yellow label was the only product?

A. I believe, then, we also sold a product with a -- a red label that was -- because the majority of -- of our -- of our coconut oil in the

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United States was sold in the health and beauty -- you know, where is used for -- for body applications, and so we -- we came out with a -- with a product that would go in the grocery section.

Q. And that was in a glass container?

A. Yes.

Q. Okay. Do you remember what month and year the glass product was introduced?

A. We -- we had several different products, but in the -- we started selling in glass containers in the 2010-11 time frame.

Q. Okay. In January 2012, what sizes was the yellow label coconut oil extra virgin available in? I think it's 15, 29, 54, and 78.

Does that sound right?

A. And also 1 gallon, I believe.

Q. And 1 gallon. Okay.

Is it correct that there was no 23 ounce yellow label that was the -- the 23 ounce was the red label for the glass?

A. Twenty-three ounce was -- was glass container, not yellow.

MR. FITZGERALD: All right. Tab 7, please.

(Exhibit 6 was marked for identification by the court reporter and is attached hereto.)

Q. (By Mr. Fitzgerald) This is a document bearing Production No. NUT5163. It's been marked as Exhibit 6.

I will represent to you that this is the oldest yellow label that we've received from any party or nonparty in this action, and if you look, it's dated July 2, 2012, near the top, next to Clive Knell.

Do you see that?

A. Right.

Q. Do you know whether there were any differences between this label dated July 2012 and the label that was in the marketplace as of January 2012?

A. Can you repeat that question?

Q. Yeah.

Basically, in other words, from -- this is July 2012.

From January 2012 to July 2012, have there been any different label or -- or is this the same?

A. I -- I don't recall.

Q. Okay. If you wanted to find that out,



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1 company believes meets regulations or not.

2 THE DEPONENT: Yeah, we -- you know, I  
3 don't know about the -- the second part of the  
4 question you asked.

5 Q. (By Mr. Fitzgerald) Do you have an  
6 understanding of whether the FDA requires or is -- to  
7 use your word, recommends a disclosure when making a  
8 statement about trans fat, like "0grams trans fat"? Is  
9 that required for that one as well?

10 A. I -- I don't recall that.

11 Q. Okay. What about for the statement  
12 "Non-Hydrogenated"?

13 A. I -- I -- I don't know that.

14 Q. You -- earlier, we talked about changing  
15 the label, and you had mentioned those two changes,  
16 removing the "62% MCTs" and the 100 percent  
17 cholesterol [sic] statement.

18 You say that was removed after a review  
19 that took -- how long did that review period take?

20 A. I'm -- I'm not clear what -- you kind of  
21 jumbled a bunch of things in there.

22 Q. Okay. Fair enough. Let me rephrase the  
23 question.

24 Nutiva recently changed its labels to  
25 remove "62% MCTs" and "100% Less Cholesterol Than

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1 Butter," correct?

2 A. Correct.

3 Q. And, earlier, you described that that  
4 change happened after some period of reviewing the  
5 labels; is that fair?

6 A. Yes.

7 Q. Okay. How long was that review period?

8 A. I -- I don't recall the -- the exact time  
9 frame.

10 Q. What's your best estimate?

11 A. Well, we're -- always look at the labels  
12 and review -- depends on what you mean by  
13 "reviewed," but we -- we did make the change and  
14 started that -- started that process, you know,  
15 as -- as -- as mentioned.

16 Q. And when was -- when did you start that  
17 process?

18 A. Over the past year.

19 Q. And so is it your testimony that that  
20 review process, leading to the decision to remove  
21 those statements, took Nutiva a year to do, or was  
22 it less than a year?

23 A. I -- I don't -- I don't recall the exact  
24 time frame.

25 Q. If you wanted to determine when that

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1 review period started, what would you do?

2 A. I'd probably need to look at more  
3 information.

4 Q. And what information would you look at?

5 A. Just so I can determine it.

6 Q. What information --

7 A. I don't --

8 Q. -- would you --

9 A. -- I don't -- I don't know what that  
10 information would be.

11 Q. Do you have emails talking about making  
12 the label changes?

13 MR. KARNIK: Let me object. I think the  
14 questioning is starting to, you know, elicit --  
15 like you just mentioned emails. Emails and  
16 communication, that would be between the attorney  
17 and client, and so I am not sure how much more  
18 specific he can get. I mean, I will allow you to  
19 rephrase it --

20 MR. FITZGERALD: Okay.

21 MR. KARNIK: -- but --

22 Q. (By Mr. Fitzgerald) So I'm not asking about  
23 the substance of any communications with your lawyers.  
24 Okay? But if -- I am entitled to know if you had  
25 communications with your lawyers, the dates of the

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1 communications, who the communications are with.

2 So are there emails that you could  
3 consultant to determine the time frame of when  
4 Nutiva began to review the label which ultimately  
5 led to the removal of these claims?

6 A. Well, if I look -- if I -- if I looked at  
7 the emails, I could -- you know, if they -- if  
8 there -- a time frame from there, then I could try  
9 to piece something together.

10 Q. Okay. Let's leave a blank in the  
11 transcript right here, and I'm going to ask you to  
12 review the information you need to and, in the  
13 blank, put in the month and year that you began the  
14 review process that led to the removal of  
15 "62% MCTs" and "100% Less Cholesterol Than Butter."  
16 (Intentionally left blank)

17 A.

18 MR. KARNIK: I'm going to object to  
19 asking him to review that here and now. I think,  
20 you know, inquiring any further about the revision  
21 process, again, is going to elicit information that  
22 is attorney-client privilege.

23 I understand that -- let's say that  
24 this -- this is the -- and I don't mean to do a  
25 running objection. I'm going to try to wrap it up.

43 (Pages 166 to 169)



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1 If this was a document request, the  
2 response would be in the form of a privilege log,  
3 and you are -- you know, you would be entitled to  
4 the date and the communication, but no -- no  
5 further.

6 But I think there's also an understanding  
7 between the parties that communications following  
8 the -- the filing -- the initiation of a lawsuit,  
9 privilege logs are not required.

10 So I am not sure how you think you can  
11 get the information you are seeking.

12 MR. FITZGERALD: Okay. I think my  
13 question is actually a lot similar. It's just,  
14 when did the review process that led to removing  
15 the label start. That's -- that's just a month and  
16 a year. I don't think that could reveal anything  
17 that's remotely attorney-client privileged, and so  
18 I am going to maintain the blank in the -- in the  
19 transcript, and, if we have to serve, we'll serve  
20 an interrogatory.

21 Q. (By Mr. Fitzgerald) Did you make the change  
22 as a result of this lawsuit?

23 MR. KARNIK: I'm going to object and say  
24 that the -- the answer would elicit attorney-client  
25 privilege information and I have to instruct him

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1 not to answer.

2 Q. (By Mr. Fitzgerald) Would you have made the  
3 change if we hadn't filed the lawsuit?

4 A. We -- we made changes based on -- on  
5 advice from -- from, you know, our -- our counsel.

6 Q. Okay. Does Nutiva concede that, prior to  
7 making the changes, the label was not in compliance  
8 with all applicable FDA regulations?

9 MR. KARNIK: I'm going to object in that  
10 the question calls for a legal conclusion.

11 You can answer.

12 THE DEPONENT: Okay. We -- we, at the  
13 time, put what we felt was the -- you know, was a  
14 fair and accurate label, and we made a decision to  
15 change it later.

16 MR. FITZGERALD: Okay. Can you repeat my  
17 question, please.

18 (Record read as follows:

19 "QUESTION: Does Nutiva concede that,  
20 prior to making the changes, the  
21 label was not in compliance with all  
22 applicable FDA regulations?")

23 THE DEPONENT: Now, after -- after  
24 further -- further review and recommendation of  
25 counsel that we change the -- change the label, you

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1 know, we now -- we made those changes, and -- and,  
2 you know, we could have made those changes in the  
3 previous, but we didn't -- at the time didn't see  
4 it that way.

5 Q. (By Mr. Fitzgerald) Okay. But you  
6 recognize, as you sit here today, now after getting  
7 advice of your counsel, that the previous version of  
8 the label -- or previous versions of the label did  
9 violate some FDA regulations; is that fair?

10 MR. KARNIK: Object to -- object to  
11 calling for legal conclusion again.

12 THE DEPONENT: Yes.

13 Q. (By Mr. Fitzgerald) Please describe the  
14 different types of packaging that Nutiva has used for  
15 its coconut oils during the class period?

16 MR. KARNIK: Objection. Broad and calls  
17 for a narrative.

18 Q. (By Mr. Fitzgerald) Okay. Let me be more  
19 specific.

20 As far as we know, there were three types  
21 of packaging; namely, glass, PET, and HDPE plastic.

22 Is it true that those three were used for  
23 coconut oils?

24 A. Correct.

25 Q. Are there any other, other than those

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1 three?

2 A. Not -- not that I can recall.

3 Q. What's the difference between PET and  
4 HDPE plastic?

5 A. PET is clear, and HDPE is -- is opaque.

6 Q. Any other differences?

7 A. HDPE is thicker than PET.

8 Q. Anything else?

9 A. HDPE has a tendency to -- to -- to, in  
10 shipping or hot temperatures, leak a little --  
11 leak -- maintain the seal integrity versus PET.

12 Q. HDPE better maintains the seal integrity?

13 A. Yes.

14 Q. Okay. Both the PET and HDP -- PE are  
15 BPA-free, correct?

16 A. Correct.

17 Q. Does Nutiva communicate, on the label of  
18 the products, whether the plastic packaging is PET  
19 or HDPE in any way?

20 A. We do not.

21 Q. Is Nutiva aware of any consumer  
22 preference for either PET or HDPE?

23 A. We are not aware of any -- any -- any  
24 significant difference.

25 Q. Okay. Is Nutiva aware of any significant

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1 substantiated by studies like those; is that  
2 correct?

3 A. Our tes- -- my testimony is, is that we  
4 are not making medical claims about coconut oil.

5 MR. FITZGERALD: Okay. One last thing.  
6 Just -- your counsel had emailed us a copy of the  
7 revised label, and we will put this in front of the  
8 camera briefly.

9 Got it nice and sharp?

10 THE VIDEOGRAPHER: Yup.

11 Q. (By Mr. Fitzgerald) Why don't you look at  
12 that and just let me know if that is, in fact, the  
13 revised label.

14 A. It appears to be. I don't know if it's  
15 the -- if it's the final label, but I -- I believe  
16 so.

17 Q. Okay. And one of the things I notice on  
18 there is that statement "0 grams trans fat" is  
19 still on there, but it looks like you've added the  
20 disclosure statement underneath it.

21 Do you see that?

22 A. Correct. Yes.

23 Q. And that was part of the review and  
24 advice of counsel we talked about earlier?

25 MR. KARNIK: I'll object and instruct not

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1 to answer that question as phrased.

2 Q. (By Mr. Fitzgerald) Okay. That was part of  
3 the review we talked about earlier?

4 A. There was -- there was some advice from  
5 counsel to make changes to our label.

6 Q. And it looks like a couple of the other  
7 things changed to. For example, I don't think it  
8 says "Nutritious Substitute" anymore.

9 Is that a change that Nutiva made?

10 A. Correct.

11 Q. And was that also basically in response  
12 to the lawsuit and given the review and advice you  
13 got from counsel?

14 MR. KARNIK: I have to object and  
15 instruct not to answer because it would reveal  
16 attorney-client privilege.

17 MR. FITZGERALD: Let me -- let me re-ask  
18 the question with the -- with the third thing taken  
19 out.

20 Q. (By Mr. Fitzgerald) So was that also  
21 basically part of the response to the lawsuit and  
22 reviewing the label?

23 A. It was under advice from counsel that  
24 we -- we should make some changes, and -- and we  
25 did that.

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1 Q. Okay. And that was earlier this year,  
2 right?

3 A. Correct.

4 MR. FITZGERALD: Okay. All right. I  
5 don't have anything else.

6 MR. KARNIK: Just a couple of things.

7 EXAMINATION BY

8 MR. KARNIK:

9 Q. If we can just go quickly to Plaintiff  
10 Exhibit 81, which is the Nutiva Pure Branding.

11 Can we show that to the witness one more  
12 time.

13 (Discussion off the stenographic record.)

14 Q. (By Mr. Karnik) And if -- Mr. Roulac, if you  
15 can just turn to the bottom right-hand corner, NUT137,  
16 on that, and it states: "For general population (chart  
17 below): research and friends."

18 Did I read that sentence correctly?

19 A. For -- for general population research  
20 and friends, yes.

21 Q. Okay. The green bars indicate responses  
22 as to coconut oil; is that correct --

23 A. Correct.

24 Q. -- in you're reading --

25 A. Correct --

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1 Q. -- of the document?

2 A. -- yes.

3 Q. I want to refer you to packaging of the  
4 product, and it says 5 percent above the green  
5 coconut bar?

6 A. Right.

7 Q. What does that indicate to you?

8 A. That -- it indicates that 5 percent of  
9 the -- of the general population relies on -- on  
10 the label, 19 percent rely on cookbooks and  
11 other -- other -- doctors, store staff, magazines,  
12 partners, et cetera.

13 Q. Okay. So is it fair to state that this  
14 chart reflects that 95 percent of first-time  
15 purchases of coconut oil are influenced by reasons  
16 other than the packaging of the product?

17 A. Correct.

18 Q. And does Nutiva have any research of its  
19 own or that it's retained from companies such as  
20 Pure Branding that -- that the company's aware of  
21 that would contradict that conclusion --

22 A. No.

23 Q. -- that -- this survey conclusion?

24 A. No.

25 MR. KARNIK: Okay. I have no further

86 (Pages 338 to 341)